CMPMO No. 112 of 2007.

20.8.2007 Present: Mr. V.D. Khidtta, Advocate, for the petitioners.

Mr. Haminder Chandel, Advocate, for the respondent.

I have carefully perused the order dated 24th February, 2007 passed by the learned Civil Judge (Senior Division), Una whereby the objections raised by the petitioners about the maintainability of the execution petition had been over-ruled on the ground that despite the earlier dismissal of the execution petition for non-prosecution on 25th February, 2003, fresh application was maintainable since non-execution or non-satisfying of the decree had not been certified by the transferee Court (Civil Judge) under Section 41 of the Code of Civil Procedure to the Court which had sent the decree for execution under Section 38 of the Code of Civil Procedure.

On a consideration of all the relevant aspects in the matter and keeping in view the legal provisions especially Section 38 read with Section 41 of the Code of Civil Procedure, I feel satisfied that the learned Court below has not committed any error in passing the impugned order. Mr. Khidtta drew my attention to a report of the Execution Clerk in the office of the Civil Judge (Senior Division), Una in support of his contention that the certificate of non-satisfaction of the decree had in deed been issued under Section 41 of the Code of Civil Procedure. There is no gainsaying that a mere report of a Clerk in the office of the Presiding Officer of the Court cannot be equated with the certificate issued by the Court itself under Section 41 of the Code of Civil Procedure.

The petition is dismissed.

CMP No.360 of 2007.

In view of the dismissal of the main petition, this application also stands dismissed.

August 20, 2007. **(V.K. Gupta), C.J.**
(rc)